

Appl. No. 09/319,649  
Amdt. dated October 10, 2003  
Reply to Office action of July 16, 2003

## REMARKS

Reconsideration is respectfully requested.

Claims 1-3, 4-8 and 10-25 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over Herz et al (US 5758257) in view of Welsh (US 5374951) and Williams et al (US 5977964). Applicants respectfully traverse this rejection.

Herz is related to a system for attempting to predict customer preferences and pre-scheduling a number of video programs to that particular customer based on a customer preference profile. The document discusses that a fixed number of video transmission channels are available and schedules a number of preferred (in accordance with the profile) videos based on that profile until the number of channels is zero. The column 4 section that the Examiner refers to is discussing the user profile and mentions that the profile may be different for times of days and days of weeks (that is, the customer's preference for type of video program may be different at different times and days). Note also that the profile has nothing to do with individual particular videos, but instead relates to characteristics for classifying videos such as under directors (that is, names of directors), actors (particular actors' names), degree of sex or violence. Then, separate and unrelated to what is taking place in the customer profile, each video has a profile associated with the video that indicates the degree of content in that video for the various characteristics.

Page 13 — RESPONSE (U.S. Patent Appln. S.N. 09/319,649).  
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Then, the system of Herz attempts to make a calculated determination of the most likely videos that the particular customer would choose to view and provides those videos over the available numbers of channels, up to the number of channels available.

A simple way to describe what is happening is that the Herz system ranks available videos according to a customer's perceived preference profile and makes the top "n" videos available (where "n" is the number of transmission channels that are available).

Herz "monitors" which programs were accessed or watched by a user. There is no indication within Herz of whether the act of simply selecting a program for as short a period of, for example, just one minute, qualifies as "watching" it. It says the return data collection can be either wired or wireless.

Applicants respectfully disagree with the Examiner's assertion that Herz takes the opportunity of making use of the Internet to perform any functions as needed by a user. This is proposed by applicants, not Herz. Herz doesn't show or suggest this.

Also, the Examiner's comment on page 3 of the office action regarding claim 3 is a bit puzzling to applicants. Here The Examiner is stating that limitations from the specification are not read into the claims. However, the specific limitation in question does appear in the claims (for example, in claim 3). The Examiner's comment is one that would be made in the case of

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arguing a limitation that is not in the claim. But since the limitation in question is in the claim in question, applicants are concerned that the Examiner is examining an incorrect set of claims or has not closely studied the claim in repeating the rejections.

The Examiner points to Herz col. 51, lines 5-8 and Williams column 8 line 51 as showing use of the user's accessing the Internet. These locations in these referenced documents do not teach what is claimed. Herz is stating that the invention's concepts might also be applied to use of the internet, attempting to predictively pre-schedule and pre-feed information that a user is likely to want to obtain from the internet. It does teach or suggest the concept of claim 3. Similarly, Williams is stating that the database can be updated periodically by phone/network, but it does not state that the opportunity of the user accessing the internet is advantageously employed.

The Examiner asserts in the office action that, at column 4 line 59 through column 5 line 4, Herz shows obtaining viewed channel information and obtaining a program ID of a viewed program. Such a concept is not taught in this portion of Herz. However, at column 6, lines 56-65, it is indicated that the customer's set top terminal is polled to retrieve stored data indicating which video was watched. This information is then used to update the customer profile in an attempt to better

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predict what videos the customer might wish to watch for future preselection of videos to feed to the customer.

The Examiner disagrees with applicants' earlier arguments that Welsh simply detects the encoded signal. The Examiner argues that Welsh "produces" the character strings encoded in the TV signal. Applicants respectfully traverse the rejection and do not believe the Examiner's interpretation of Welsh is warranted. The term "detect" in this context of applicants' claims is different from the context of Welsh. The use of the term "produce" in Welsh here is more appropriately "reproduce" which might be considered a synonym for "detect" in the concept of receiving signals. It is respectfully submitted that Welsh is not teaching or suggesting what applicants claim.

Further, another consideration is that Herz is not at all concerned with television broadcast in the conventional sense of signals broadcast via radio frequency propagation. Instead Herz is for application in a cable television or similar multiple channel video signal transmission system. Welsh also is related to cable television (CATV) even though it uses the term broadcast, but the sense in Welsh is broadcasting over a cable television system. Thus, applicants' claims all include that they relate to "TV programs planned to be broadcast in that area". It is clear from applicants' specification that this relates to "over the air" broadcasts, not cable television. The issues between the two types of services can be different and it

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is respectfully submitted that one would not look to the Welsh or Herz documents that relate to cable television when producing an invention such as applicants' which is related to broadcast television.

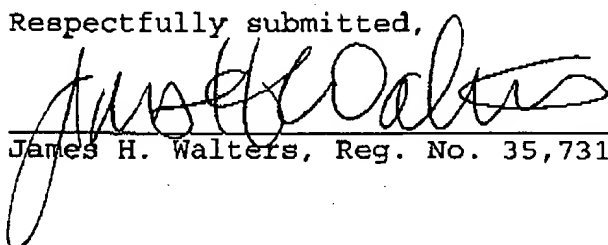
In summary, since applicants respectfully submit that the Examiner's interpretation of what Herz discusses at column 4 line 59 and following is not warranted (the Examiner says Herz teaches viewed channel information here, but Herz teaches general statistical characteristics of a profile here which might vary by time of day or day of week, not channel information and time), applicants respectfully submit that the claims in general are neither taught nor suggested by the proposed documents, whether considered alone or whether combined. Therefore claims 1-25 are submitted to be allowable.

Further applicants respectfully assert that the concept of using the opportunity of the user accessing the internet is neither taught nor suggested by the documents and combinations proposed by the Examiner. This concept appears in claims 3, 8, 12 and 17-25. Therefore, claims 3, 8, 12 and 17-25 are submitted to be allowable for additional reasons.

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In light of the above noted amendments and remarks, this application is believed in condition for allowance and notice thereof is respectfully solicited. The Examiner is asked to contact applicants' attorney at 503-224-0115 if there are any questions or if further information is needed.

Respectfully submitted,

  
James H. Walters, Reg. No. 35,731

Customer number 802  
DELLETT AND WALTERS  
Suite 1101  
310 S.W. Fourth Avenue  
Portland, Oregon 97204 US  
(503) 224-0115  
DOCKET: Y-163

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